

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 33 Protests, Disputes, and Appeals

Subject: 33.2 Disputes and Claims

PURPOSE: This standard practice (SP) establishes the procedures for handling disputes arising under or relating to subcontracts.

POLICY: The Laboratory will attempt to resolve claims relating to subcontracts in a fair, timely, and objective manner.

SCOPE: This SP applies to all disputes with respect to procurement specialist decisions on matters arising under or relating to a subcontract.

DEFINITIONS:

Claim A claim refers to a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money, the adjustment or interpretation of subcontract terms, or other relief arising under or relating to the subcontract.

Claim Arising Under a Subcontract A claim arising under a subcontract is a claim for which the possibility of an equitable adjustment is provided for in the subcontract terms and conditions (e.g., *Stop-Work Order* or *Changes*).

Claim Relating to a Subcontract A claim relating to a subcontract is a claim for which a subcontractor's remedy is not specifically provided for by the terms and conditions but is subject to the disputes procedure.

Dispute Review Board The Dispute Review Board is a panel appointed by the Procurement Manager for the purpose of investigating the merits of a subcontractor's claim.

PROCEDURES:

Claim Submitted to the Procurement Specialist A claim made by a subcontractor against the Laboratory must be submitted in writing within 30 calendar days after the facts surrounding the claim are known or should have been known. Every attempt should be made to negotiate a settlement with the subcontractor. If negotiations are unsuccessful, a unilateral decision may be issued in writing by the procurement specialist within 30 calendar days after receipt of the claim.

Claim Submitted to the Procurement Manager If the subcontractor finds the procurement specialist's decision to be unsatisfactory and desires to pursue further action, the claim must be submitted in writing to the Procurement Manager for a written decision. The Procurement Manager may delegate investigation of the claim to a Dispute Review Board.

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Dispute Review Board

The Procurement Manager may appoint a Dispute Review Board chairperson as the need arises. The Dispute Review Board chairperson will appoint a panel that may consist of a representative from Laboratory Counsel, as appropriate; an impartial and independent procurement specialist; and an impartial and independent technical expert familiar with the subcontracted goods or services. For construction services, the Board will also consist of an impartial and independent engineer.

Submittals

The following documentation will be submitted to the Dispute Review Board for review:

- A memorandum explaining the facts surrounding the claim, a description of the procurement specialist's position, a description of the subcontractor's position, and a summary of the facts surrounding the claim;
- The subcontract, including the pertinent specifications, statement of work, modifications, plans, and drawings;
- The subcontractor's initial claim and the procurement specialist's response;
- All correspondence between the parties that is relevant to the initial claim and the appeal, including adequate justification of costs, if costs are involved; and
- Any additional information considered pertinent.

Recommendation

Within 15 working days after a review of the facts surrounding the subcontractor's appeal, the Dispute Review Board will provide its findings and recommendations to the Procurement Manager. The Procurement Manager will issue a written decision to the subcontractor stating the reasons for the decision. A copy of the written decision will be provided to the procurement specialist for inclusion in the subcontract file.

Time Constraints

Subcontractor Claims of \$50,000 or Less — If requested in writing by the subcontractor, a written decision for claims of \$50,000 or less must be issued within 60 days.

Subcontractor Claims Exceeding \$50,000 — For claims exceeding \$50,000, a written decision must be rendered within 60 days or the subcontractor must be notified of the date by which the decision will be made.

Monetary Interest

No interest will be accrued on any disputed funds during the period in which the claim is pending within this administrative disputes process.

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**Potential Fraud or
Alleged Improper
Conduct**

Claims involving potential fraud or alleged improper conduct are excluded from the disputes process. Suspected claims of this nature must be immediately referred to the Procurement Manager, who will refer the claims to the appropriate Laboratory organization for investigation.

CLAUSE:

A *Disputes* clause is included in all sets of the General Provisions.

RESPONSIBILITIES:

**Procurement
Specialist**

The procurement specialist shall:

- Review and evaluate a subcontractor's claim in a fair, timely (within 60 calendar days), and objective manner;
- Coordinate all activities pertaining to a claim with the Procurement Manager; and
- Provide all pertinent information and documentation to the Dispute Review Board.

**Procurement
Manager**

The Procurement Manager shall:

- When appropriate, empanel a Dispute Review Board to investigate a subcontractor's claim;
- Issue a written decision for subcontractor claims submitted to the Procurement Manager for resolution; and
- Refer claims involving potential fraud or alleged improper activity to the appropriate Laboratory organization for investigation.